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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,882

09/23/2003

Vladimir Feingold

03-114

3596

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01/10/2008

EXAMINER

BACHMAN, LINDSEY MICHELE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

01/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/668,882

Applicant(s)

FEINGOLD ET AL.

Examiner

Lindsey Bachman

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 11 and 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 4 October 2007.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 10, 11, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dybbs (US Patent 6,228,099) in further view of Ophthalmology Times E-News "Temporal hinge LASIK flap allows for broad hinge," 13 April 2003 (Ophthalmology Times).**

Claims 10 and 11: Dybbs teaches a method of using a keratome includes positioning an eye in a positioning ring (84) for a cornea (column 7, lines 43-45) and attaching a blade assembly (74) having a blade (98), a guide (94 and 112) and a mounting member (100) that is connected to a linear drive mechanism (via element 20

which is connected to linear drive members 52 and 64, see Figure 11). The mounting member has a forward portion (106) that is away from the drive mechanism and a rearward portion (the exact surface that the line for element 100 is touching in Figure 3). The forward portion is configured so that the blade and blade guide are mounted onto the mounting member so that the blade is fixed in the cutting direction to the guide (column 8, lines 40-50). The rearward portion of the mounting member is attached to the drive mechanism (see Figure 3, attached via 146 to element 20).

Dybbs'099 does not teach a start position at the nasal portion of the positioning ring and moving the blade assembly towards the drive mechanism to create a temporal-hinged corneal flap.

Ophthalmology Times teaches that creating a temporal hinge during LASIK surgery allows the surgeon to create a broad hinge which creates a larger area of treatable corneal bed than other orientations of the hinge flap. It would have been obvious to one skilled in the art at the time of the invention to modify the method taught by Dybbs'099 by creating a temporal hinge because this creates a larger treatable area on the cornea.

Dybbs'099 teaches that the motor can operate to move the cutter away or towards the drive mechanism (column 13, lines 8-13). In light of this and the teaching by Ophthalmology Times, it would have been obvious to one of ordinary skill in the art to rearrange the parts (the orientation of the blade assembly) of the device taught by Dybbs so that the blade cuts while moving towards the drive mechanism to create a temporal corneal hinge.

Claim 14 and 15: The mounting member (100) has spaced apart elements (two protrusions on the surface of element 106, seen in Figure 3 and 4) that attach to the guide (see Figure 4). Since Dybbs'099 teaches that the microkeratome unit is disposable (column 4, lines 44-45), it would be obvious to make the guide and the spaced apart elements integral with one another.

Claim 16 and 17: Dybbs teaches a device that contains a positioning ring a positioning ring (84) for a cornea (column 7, lines 43-45), a blade assembly (74) having a blade (98), a guide (94 and 112) and a mounting member (100) that is connected to a linear drive mechanism (via element 20 which is connected to linear drive members 52 and 64, see Figure 11). The mounting member has a forward portion (106) that is away from the drive mechanism and a rearward portion (the exact surface that the line for element 100 is touching in Figure 3). The forward portion is configured so that the blade and blade guide are mounted onto the mounting member so that the blade is fixed in the cutting direction to the guide (column 8, lines 40-50). The rearward portion of the mounting member is attached to the drive mechanism (see Figure 3, attached via 146 to element 20).

Dybbs'099 does not teach a start position at the nasal portion of the positioning ring and moving the blade assembly towards the drive mechanism to create a temporal-hinged corneal flap.

Ophthalmology Times teaches that creating a temporal hinge during LASIK surgery allows the surgeon to create a broad hinge which creates a larger area of treatable corneal bed than other orientations of the hinge flap. It would have been

obvious to one skilled in the art at the time of the invention to modify the method taught by Dybbs'099 by creating a temporal hinge because this creates a larger treatable area on the cornea.

Dybbs'099 teaches that the motor can operate to move the cutter away or towards the drive mechanism (column 13, lines 8-13). In light of this and the teaching by Ophthalmology Times, it would have been obvious to one of ordinary skill in the art to rearrange the parts (the orientation of the blade assembly) of the device taught by Dybbs so that the blade cuts while moving towards the drive mechanism to create a temporal corneal hinge.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dybbs'099 in view of Ophthalmology Times, as applied to Claim 10, in further view of Steinert (US Patent 5,215,104).**

Dybbs'099 in view of Ophthalmology Times teaches the limitations of Claim 13, except for a sapphire blade.

Steinert'104 teaches a corneal blade made of sapphire because it provides a highly predictable and reliable cut (column 10, lines 30-33). It would have been obvious to one skilled in the art at the time the invention was made to modify the blade taught by Dybbs'099 in view of Ophthalmology Times with the sapphire blade taught by Steinert'104 because of the sapphire blades are predictable and have reliable cutting abilities.

***Response to Arguments***

Applicant's arguments with respect to claims 10, 11 and 13-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lb



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER